

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 16, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP1169-CR

Cir. Ct. No. 2007CF297

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARQUIAN Q. SHANNON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
EMILY S. MUELLER, Judge. *Affirmed.*

Before Higginbotham, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Marquian Shannon appeals a judgment convicting him of possessing cocaine with intent to deliver it. The issue on appeal is whether police officers lawfully obtained the evidence the State used to convict Shannon when they stopped the vehicle Shannon was driving and searched it. We affirm.

¶2 The relevant facts are not in dispute. Two Racine police officers in an unmarked car were observing a gas station where frequent drug activity had reputedly occurred. They observed Shannon park his car, go into the station, come out, move his car a short distance, and then move it again when someone parked right next to him. Through binoculars, an officer then saw another person enter Shannon's car and exchange what he believed was money with Shannon. A minute later he observed a third person approach Shannon's car and apparently exchange some unidentifiable item with Shannon through the driver side window. Shannon then drove off and the officers stopped him a few minutes later for speeding. As Shannon pulled over to stop, the officers observed him reach down with his right hand. The officers directed him to exit his vehicle and then patted him down for weapons. An officer then searched the vehicle for weapons and in the process discovered cocaine under the driver's seat, resulting in this prosecution.

¶3 Based on these facts, the trial court denied Shannon's suppression motion, and a jury subsequently found him guilty of the possession charge. Shannon does not contest the lawfulness of the decision to stop his vehicle. The issue is whether the officers had reasonable suspicion to subsequently search both his person and his vehicle for weapons.

¶4 During an investigative stop an officer may conduct a pat down to determine whether the detained person is armed, if the officer is "able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Johnson*, 2007 WI 32, ¶21, 299 Wis. 2d 675, 729 N.W.2d 182 (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The test of a protective search for weapons is objective; whether a reasonably prudent officer in the circumstances could believe that his/her safety

and that of others was at risk because the individual may be armed and dangerous. *State v. Kyles*, 2004 WI 15, ¶10, 269 Wis. 2d 1, 675 N.W.2d 449.

¶5 When the person is stopped in a vehicle, the search for weapons may extend to the passenger compartment of the person's vehicle. *State v. Moretto*, 144 Wis. 2d 171, 177-78, 423 N.W.2d 841 (1988). The protective search of the vehicle remains justified even if the detaining officers have removed the suspect from the vehicle and have the suspect in their control, if an officer reasonably suspects that the person "is dangerous and ... may gain immediate control of weapons' placed or hidden in the passenger compartment." *Johnson*, 299 Wis. 2d 675, ¶24 (quoting *Michigan v. Long*, 463 U.S. 1032, 1049 (1983)). Because the facts of Shannon's stop are not in dispute, our review of the reasonableness of the officer's actions is de novo. *See Johnson*, 299 Wis. 2d 675, ¶13.

¶6 The officers reasonably searched Shannon and his vehicle. Before the stop occurred, the officers observed Shannon parked in an area of reputed drug activity, conducting what appeared to be drug-related transactions.¹ A police officer may reasonably associate drug activity with weapons possession. *See id.*, ¶29. Additionally, "[d]epending upon the totality of the circumstances in a given case, a surreptitious movement by a suspect in a vehicle immediately after a traffic

¹ Shannon cites *State v. Young*, 212 Wis. 2d 417, 569 N.W.2d 84 (Ct. App. 1997), for the proposition that the officers could not reasonably draw inferences of drug activity from what they saw at the gas station. In *Young* we held that without more, Young's presence in a drug trafficking area, an officer's observation of a brief meeting between Young and another man on the street, and the officer's experience that drug deals often occur in brief on-street meetings, did not create reasonable suspicion to stop Young. *Id.* at 433. Here, the situation differed because officers first observed Shannon's unusual behavior in a drug zone when he moved his car twice in a drug-trade zone. Officers then saw what appeared to be two exchanges, one of money, within a minute of each other. These additional facts, and the furtive gesture in the car, distinguish *Young*.

stop could be a substantial factor in establishing that officers had reason to believe that the suspect was dangerous and had access to weapons.” *Id.*, ¶37. These circumstances, in combination, justified a reasonable belief that Shannon might be armed and dangerous. The search was therefore lawful.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

